

ORIGINAL

COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

FILED
PORTAGE COUNTY
COMMON PLEAS COURT

2009 SEP -2 AM 9:16

RICHARD TURK, et al

Plaintiffs

vs.

SERPENTINI CHEVROLET, INC., et al

Defendants

CASE NO. 2007 CV 1356

JUDGE JOHN A. ENLOW

MOTION TO LIFT STAY

Plaintiffs move the Court to lift the stay which was ordered because of the bankruptcy filing by Defendant General Motors Corporation. Further, Plaintiffs ask to substitute the New General Motors company, known as NGMCO, Inc., for the old General Motors Corporation, and to proceed to trial as previously scheduled.

Bankruptcy Proceedings and Order

Defendant General Motors Corporation filed bankruptcy on June 1, 2009. See, *In Re General Motors Corporation*, Case No. 09-50026 (REG), U.S. Bankruptcy Court, S.D. N.Y. On June 3, 2009, Defendant Serpentini Chevrolet, Inc. filed a Notice of Suggestion of Bankruptcy. On June 4, 2009, Plaintiffs responded, explaining that the automatic bankruptcy stay should not apply to the non-bankrupt defendant, Serpentini Chevrolet. On June 11, 2009, Defendant General Motors Corporation filed a Notice of Bankruptcy. Prior to those filings, on June 2, this Court ordered that this matter shall be stayed pending the General Motors bankruptcy. The Court directed the parties to notify the Court when the stay should be lifted.

On July 5, 2009, the U.S. Bankruptcy Court of the Southern District of New York issued an order confirming the sale of assets to NGMCO, Inc. *In Re General Motors Corporation*,

Docket No. 2968.¹ Pursuant to the Order and the Amended and Restated Master Sale and Purchase Agreement, purchaser NGMCO, Inc. has assumed all express warranties from the old General Motors.²

CONCLUSION

Plaintiffs ask the Court to lift the stay, order that NGMCO, Inc. be substituted for the General Motors Corporation, and proceed to trial.

¹A full copy of the Order is available at <http://www.motorsliquidationdocket.com/pleadings.php3>. The Amended and Restated Master Sale and Purchase Agreement (MSPA) is Exhibit A to the Order.

²The Order states,

The Purchaser is assuming the obligations of the Sellers pursuant to and subject to conditions and limitations contained in their express written warranties, which were delivered in connection with the sale of vehicles and vehicle components prior to the Closing of the 363 Transaction and specifically identified as a "warranty."


Order, pp. 44-45, ¶56.

The Amended and Restated Master Sale and Purchase Agreement states that the Assumed Liabilities include

(vii) (A) all Liabilities arising under express written warranties of Sellers that are specifically identified as warranties and delivered in connection with the sale of new, certified used or pre-owned vehicles or new or remanufactured motor vehicle parts and equipment (including service parts, accessories, engines and transmissions) manufactured or sold by Sellers or Purchaser prior to or after the Closing and (B) all obligations under Lemon Laws;

MSPA, Section 2.3 (a).

Respectfully submitted,



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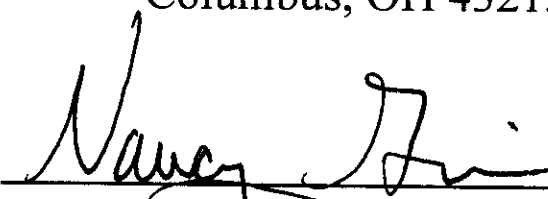
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PROOF OF SERVICE

This document was served by U.S. mail this 1st day of September 2009 to:

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